86 N. E. 174. If the defendant's right to recover his expenses depended upon a quasi-contractual counterclaim, this result would be correct, for the wrongdoer has no claim in quasi-contract. See 22 HARV. L. REV. 419, 425. The courts, however, have not treated the question in this way, but give the plaintiff compensation beyond his injury on the theory of exemplary damages. From this point of view the result seems unjustifiable, as the plaintiff has suffered no more injury than if the trespass had been innocent, and deserves no greater compensation.

EMINENT DOMAIN — WHAT PROPERTY CAN BE TAKEN — LAND ALREADY DEVOTED TO THE SAME PUBLIC USE. — An electric railway company acquired a site for a power plant and was proceeding with due diligence to develop it for use. Another railway company seeks to take the land for the same purpose by eminent domain under a general statute. *Held*, that it cannot do so. *State* v. *Superior Court for Spokane County*, 145 Pac. 999 (Wash.).

This decision is undoubtedly correct. It is true that property already held for a public use is still subject to the state's power of eminent domain. *Central Bridge Corp.* v. *Lowell*, 4 Gray (Mass.) 474. And property may be taken from private into public ownership to be used for the same public purpose. *In the Matter of the City of Brooklyn*, 143 N. Y. 596, 38 N. E. 983; *Brady* v. *Atlantic City*, 53 N. J. Eq. 440, 32 Atl. 271. But it is not within the power of the legislature to authorize a private individual or corporation to take property already devoted to public use to be used for the same purpose and in the same manner, for this would merely effect an arbitrary transfer of the property of one person to another without the justification of public necessity or benefit which is the basis of the right of eminent domain. *Cary Library* v. *Bliss*, 151 Mass. 364, 25 N. E. 92; and see *Lake Shore & M. S. Ry. Co.* v. *Chicago & W. I. R. Co.*, 97 Ill. 506, 512; *West River Bridge Co.* v. *Dix*, 6 How. (U. S.) 507, 537; 2 LEWIS, EMINENT DOMAIN, 3 ed., § 440. The result of this case could also be reached by statutory construction, for unless greater power is given expressly or by necessary implication, general eminent domain statutes give the right to take land already in public use, only upon the condition that the loss of the part taken will not seriously impede this existing use and that the condemnor can show a reasonable necessity for it. *In the Matter of the City of Buffalo*, 68 N. Y. 167; *Rutland-Canadian R. Co.* v. *Central Vermont Ry. Co.*, 72 Vt. 128, 47 Atl. 399; *Butte A. & P. Ry. Co.* v. *Montana U. Ry. Co.*, 16 Mont. 504, 41 Pac. 232; see 18 HARV. L. REV. 313. But see *Marin County Water Co.* v. *Marin County*, 145 Cal. 586, 79 Pac. 282.

EVIDENCE — CHARACTER OF PARTIES — ADMISSIBILITY IN CIVIL SUITS INVOLVING MORAL TURPITUDE. — In an action upon a fire insurance policy, the defendant sought to defeat recovery upon the ground that the insured, who died before trial, had fraudulently overstated his loss. On this issue evidence of the good reputation of the insured for truth and honesty was given. *Held*, that such evidence is admissible. *Rasmusson* v. *North Coast Fire Ins. Co.*, 145 Pac. 610 (Wash.).

Attempts have been made at various times to engraft exceptions upon the general rule excluding evidence of the character of the parties in civil suits where it is not itself in issue. In negligence cases the reputation of the negligent person has been admitted where there were no eyewitnesses. *Chicago, R. I. & P. Ry. Co.* v. *Clark*, 108 Ill. 113. But see 12 HARV. L. REV. 500, 568. Another exception was attempted in an early New York case, where the act involved moral turpitude and was based solely upon circumstantial evidence. *Ruan* v. *Perry*, 3 Cai. (N. Y.) 120. But this case was promptly overruled and is generally repudiated to-day. *Gough* v. *St. John*, 16 Wend. (N. Y.) 646. See 1 WIGMORE, EVIDENCE, § 64. Upon analogy to the ordinary rule in criminal cases allowing

the accused to show his own good character, another exception has been introduced in actions for slander imputing a crime, where truth has been pleaded. *Harding* v. *Brooks*, 5 Pick. (Mass.) 244; *Downey* v. *Dillon*, 52 Ind. 442. *Contra*, *Matthews* v. *Huntley*, 9 N. H. 146; *Houghtaling* v. *Kelderhouse*, 2 Barb. (N. Y.) 149 (affirmed 1 N. Y. 530). A somewhat similar exception has been advocated wherever, as in the principal case, the act in issue is itself also a crime. *Hein* v. *Holdridge*, 78 Minn. 468, 81 N. W. 522. *Contra*, *Continental Ins. Co.* v. *Jacknichen*, 110 Ind. 59, 10 N. E. 636; *Adams* v. *Elseffer*, 132 Mich. 100, 92 N. W. 772. In following the analogy of the criminal cases, these two last exceptions overlook the historical fact that the rule in criminal cases is an exception made in favor of the criminal in an attempt to mitigate the severity of the old English criminal law. See *Matthews* v. *Huntley*, *supra*, 148. This consideration has no place in a civil suit. On the other hand, the dangers of complicating the issue, prolonging the trial and prejudicing the jury weigh heavily against extending the exceptions to the character rule.

EVIDENCE — OPINION EVIDENCE — EXPERT TESTIMONY: CALCULATION OF PROBABILITY. — The defendant was indicted for having offered in evidence a typewritten document with knowledge of its fraudulent alteration. It was shown that certain peculiarities of the form and alignment of the letters of the alteration corresponded exactly with peculiarities in specimens of writing from the defendant's typewriter. The defendant brought out from testimony given by typewriter experts the many causes and great frequency of occurrence of such peculiarities. In answer to a hypothetical question propounded by the prosecution assuming a certain frequency to the appearance of each defect, an assumption apparently unwarranted by any evidence, an expert mathematician then calculated for the jury the chances of the coincidence of these defects in another machine as being one in four billion. *Held*, that the admission of this mathematician's testimony was reversible error. *People* v. *Risley*, 214 N. Y. 75, 108 N. E. 200.

For a discussion of mathematically determined probability and its use in evidence, see NOTES, p. 693.

EVIDENCE — OPINION EVIDENCE — HANDWRITING: TESTING LAY WITNESSES BY EXTRANEOUS TRUE AND FORGED SIGNATURES. — Witnesses who were acquainted with the defendant's handwriting from having seen him write or having seen his admitted signatures in the course of business, affirmed the authenticity of a disputed signature. On the cross-examination they were asked to pass upon the authenticity of other signatures, both true and forged. The merit of their answers was displayed by proving the authorship of these signatures in a manner which would have made authentic signatures admissible for the purpose of juxtaposition on the direct examination. *Held*, that such a test is not permissible. *Fourth National Bank of Fayetteville* v. *McArthur*, 84 S. E. 39 (N. C.).

The interesting problem of impeaching lay witnesses as to handwriting, which the case raises, is discussed in this issue of the REVIEW, p. 699.

EVIDENCE — OPINION EVIDENCE — SELF-DEFENSE: BYSTANDER'S OPINION OF DEFENDANT'S DANGER FROM DECEASED. — At a homicide trial the defendant pleaded self-defense and testified to her belief that the deceased was about to shoot. A witness, after describing the actions of the deceased, was then asked what he thought the deceased was doing with his right hand, and would have answered that "his impression" was that he "was attempting to draw a pistol." *Held*, that it was error to exclude this testimony. *Latham* v. *State*, 172 S. W. 797 (Tex. Cr. App.).

The lower court excluded the evidence on the ground that it was opinion